Supreme Court, U.S.
FILED
JUL 13 1999
CLERK

No. 98-1688

IN THE

Supreme Court of the United States

BONNEVILLE ASSOCIATES, LIMITED PARTNERSHIP, and MACHAN HAMPSHIRE PROPERTIES, LTD.,

Petitioners,

v.

DAVID J. BARRAM, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY ARGUMENT

Petitioners Bonneville Associates, Limited Partnership and Machan Hampshire Properties Ltd. (Bonneville) respectfully submit that respondent is incorrect in arguing (1) that the General Services Board of Contract Appeals (GSBCA) did not abuse its discretion in refusing to reinstate Bonneville's appeal and (2) that the 90-day statute of limitations provision of the Contract Disputes Act of 1978 (CDA) should not be equitably tolled.

When Bonneville moved to have its appeal to the GSBCA dismissed, it simply asked that it be allowed to withdraw its appeal before the GSBCA in order to pursue an appeal in the United States Claims Court. (App. E at 47a). In granting this request, the GSBCA dismissed the appeal pursuant to GSBCA Rule 28(a)(1) rather than Rule 27(c). (App. D at 45a). The GSBCA, on its own initiative, thus decided to treat Bonneville's request as a voluntary dismissal rather than dismissing the appeal in lieu of stay or suspension and without prejudice to reinstatement. If the GSBCA had dismissed pursuant to Rule 27(c), Bonneville would have had a hearing on the merits.

The GSBCA then compounded its initial error, *i.e.*, dismissing pursuant to Rule 28(a)(1), by deciding that such a dismissal should be treated in the same way the federal courts would have treated a dismissal without prejudice under Rule 41(a) of the Federal Rules of Civil Procedure. (App. A at 9a). The GSBCA did not have to do this, and given the good faith effort by Bonneville to prosecute its appeal in a timely manner and in the proper forum, GSBCA's action was inappropriate.

Respondent argues this is a garden variety case of excusable neglect by Bonneville and therefore the 90-day statute of limitations should be equitably tolled in order to allow for a hearing on the merits. Respondent is incorrect. Bonneville, at all times, prosecuted its appeal in a timely manner; for example, once Bonneville concluded that the United States Claims Court rather than GSBCA was the proper forum, it immediately appealed to that court. The suggestions that Bonneville should have done more, *e.g.*, indicate to the GSBCA that if the Court of Federal Claims' suit ultimately were dismissed, it would seek to reinstate its appeal to the GSBCA (App. A at 12a) reflects the benefit of hindsight. Yes, if Bonneville had to do this again, it would certainly make explicitly clear to the GSBCA that Bonneville was concerned about the issue of GSBCA's jurisdiction and that if the Court of Federal Claims did not take jurisdiction it would be back to GSBCA. However, at the time Bonneville did not believe such explicit statements were necessary given the GSBCA policy of allowing reinstatements within three years of the dismissal.

CONCLUSION

Bonneville therefore respectfully requests that this Court grant its petition for certiorari.

Respectfully submitted,

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